

<p>1 STATE OF NEW MEXICO</p> <p>2 BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD</p> <p>3 No. EIB 18-05 (R)</p> <p>4 IN THE MATTER OF:</p> <p>5 PETITION TO ADOPT NEW REGULATIONS</p> <p>6 FOR THE PURPOSE OF CONTROL OF FUGITIVE</p> <p>7 DUST SOURCES, TITLE 20, CHAPTER 2</p> <p>8 NMAC</p> <p>9</p> <p>10</p> <p>11 TRANSCRIPT OF PROCEEDINGS</p> <p>12</p> <p>13 BE IT REMEMBERED that on the 28th day of</p> <p>14 September, 2018, this matter came on for hearing before</p> <p>15 the ENVIRONMENTAL IMPROVEMENT BOARD, at the New Mexico</p> <p>16 Farm and Ranch Heritage Museum, Room V1, 4100 Dripping</p> <p>17 Springs Road, Las Cruces, New Mexico, at the hour of</p> <p>18 9:54 a.m.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>3</p> <p>1 I N D E X</p> <p>2 Opening Statement by Ms. Bannerman 7</p> <p>3 MICHAEL BACA</p> <p>4 Direct Examination by Ms. Bannerman 11</p> <p>5 Cross Examination by Mr. Holt 27</p> <p>6 Closing Statement by Ms. Bannerman 29</p> <p>7</p> <p>8 E X H I B I T S ADMITTED</p> <p>9 NMED EXHIBIT:</p> <p>10 1. Baca Resume 11</p> <p>11 2. Singleton Resume</p> <p>12 3. Baca Written Testimony 11</p> <p>13 4. Proposed Regulation, Title 2, Chapter 2 NMAC 11</p> <p>14 5. Charts Displaying Data on Annual and Seasonal</p> <p>15 Exceedances 11</p> <p>16 6. Comments Attached to Letter to Goodyear from</p> <p>17 EPA Region 6, 6/17/15 11</p> <p>18 7. EPA Exceptional Events Rules 11</p> <p>19 8. Draft High Wind Fugitive Dust Mitigation Plan</p> <p>20 for Dona Ana and Luna Counties 11</p> <p>21 9. Existing Ordinances and Rules Reviewed by</p> <p>22 Bureau 11</p> <p>23 10. Fugitive Dust Micro-Inventory Final Report -</p> <p>24 5/31/18 11</p> <p>25</p>
<p>2</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 For the Environmental Improvement Board:</p> <p>4</p> <p>5 MR. MATTHEW HOLT</p> <p>6 Hearing Officer</p> <p>7 Environmental Improvement Board</p> <p>8 1190 St. Francis Drive</p> <p>9 Harold Runnels Building</p> <p>10 Santa Fe, New Mexico 87501</p> <p>11</p> <p>12 Board Counsel:</p> <p>13</p> <p>14 MR. GIDEON ELLIOT</p> <p>15 ASSISTANT ATTORNEY GENERAL</p> <p>16</p> <p>17 For New Mexico Environment Department:</p> <p>18</p> <p>19 MS. KIM BANNERMAN</p> <p>20 NEW MEXICO ENVIRONMENT DEPARTMENT</p> <p>21 OFFICE OF GENERAL COUNSEL</p> <p>22 Post Office Box 5469</p> <p>23 Santa Fe, New Mexico 87502</p> <p>24 (505) 827-2985</p> <p>25 kim.bannerman2@state.nm.us</p>	<p>4</p> <p>1 E X H I B I T S (CONTINUED)</p> <p>2 11. Proposed Record-Keeping Sheet for Proposed Rule 11</p> <p>3 12. 1/18 Public Presentation on PM10 Mitigation</p> <p>4 Plans and FDR 11</p> <p>5 13. 1/18/18 Public Meeting Sign-In Sheets 11</p> <p>6 14. Table of Public Comments and NMED Responses 11</p> <p>7 15. Table of Public Notices 11</p> <p>8 16. 8/16/18 Letter to Small Business Advisory</p> <p>9 Commission 11</p> <p>10 17. Proposed Order and Statement of Reasons 11</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">5</p> <p>1 MR. HOLT: So the hearing of the</p> <p>2 Environmental Improvement Board will not convene for</p> <p>3 18-05, but the hearing will.</p> <p>4 So before the Board today is EIB Number</p> <p>5 18-05 (R). Again, today is Friday, September 28th, and</p> <p>6 the time is approximately 9:50.</p> <p>7 This is a public hearing held in the Farm and</p> <p>8 Ranch Museum in Ventana Room Number 1 here in Las</p> <p>9 Cruces.</p> <p>10 The purpose of today's hearing is to take</p> <p>11 evidence regarding proposed amendments to 20.2.3 NMAC,</p> <p>12 which pertains to fugitive dust control.</p> <p>13 My name is Matthew Holt. I'm the Vice-Chair</p> <p>14 of EIB, and I have been designated to preside over this</p> <p>15 hearing. I am going to be advised by the Board's</p> <p>16 counsel.</p> <p>17 As Hearing Officer, I can make evidentiary</p> <p>18 procedural rules. My rulings, I understand, are final.</p> <p>19 The hearing will be conducted in accordance</p> <p>20 with the Board's rulemaking procedures, which are set</p> <p>21 forth in 20.1.1 NMAC. And pursuant to those procedures,</p> <p>22 I will conduct this hearing so as to provide a</p> <p>23 reasonable opportunity for all persons to be heard</p> <p>24 without making this hearing unreasonably lengthy.</p> <p>25 The Rules of Civil Procedure and the Rules of</p>	<p style="text-align: right;">7</p> <p>1 MS. BANNERMAN: Thank you, Mr. Hearing</p> <p>2 Officer.</p> <p>3 My name again is Kim Bannerman. I represent</p> <p>4 the New Mexico Environment Department, specifically the</p> <p>5 Air Quality Bureau.</p> <p>6 And with me today is Mr. Michael Baca, an</p> <p>7 environmental analyst, advanced, for the Air Quality</p> <p>8 Bureau. He will be testifying. And also with me is</p> <p>9 Kerwin Singleton. He's the planning section chief for</p> <p>10 the Air Quality Bureau. He is here if necessary. He</p> <p>11 doesn't have testimony prepared, but he's -- if</p> <p>12 questions arise, he is here to answer those questions.</p> <p>13 MR. HOLT: And before I forget to do it, let</p> <p>14 me swear in your witnesses.</p> <p>15 (Oath administered to Michael Baca and Kerwin</p> <p>16 Singleton.)</p> <p>17 MR. HOLT: Do you have an opening statement</p> <p>18 for us, ma'am?</p> <p>19 MS. BANNERMAN: I do.</p> <p>20 Mr. Hearing Officer, the Department is here</p> <p>21 before you to request adoption of a new rule into Title</p> <p>22 20, Chapter 2, of the New Mexico Administrative Code, or</p> <p>23 NMAC, for the purpose of the control of fugitive dust.</p> <p>24 The standard of decision for the Board today</p> <p>25 is that, under the Air Quality Act, the Board is given</p>
<p style="text-align: right;">6</p> <p>1 Evidence will not apply, and I will make whatever orders</p> <p>2 are reasonably necessary to preserve the quorum.</p> <p>3 All testimony will be taken under oath, and</p> <p>4 all persons giving testimony will be subject to</p> <p>5 cross-examination, like any other person in attendance,</p> <p>6 on the subject matter of either their testimony or their</p> <p>7 credibility. I may limit cross-examination, as</p> <p>8 necessary, to avoid undue harassment, intimidation, or</p> <p>9 reputation.</p> <p>10 The hearing is being recorded and transcribed</p> <p>11 today by Hayley MacDonald of Russin Court Reporters.</p> <p>12 You may obtain a copy of the transcript directly from</p> <p>13 Russin Court Reporters.</p> <p>14 You may also view the transcript at the office</p> <p>15 of the Board Administrator, where it will eventually</p> <p>16 become a part of the public record.</p> <p>17 We will provide an opportunity for members of</p> <p>18 the public to make comment. If anyone here intends to</p> <p>19 make comment, I would appreciate if they would register</p> <p>20 on the sign-in sheet immediately outside the door so we</p> <p>21 can schedule time accordingly.</p> <p>22 Ms. Bannerman, I understand that you are again</p> <p>23 representing the New Mexico Environment Department.</p> <p>24 If you would enter your appearance and</p> <p>25 introduce your witnesses.</p>	<p style="text-align: right;">8</p> <p>1 the authority to enact regulations to address air</p> <p>2 quality.</p> <p>3 In considering a proposed new rule, as you are</p> <p>4 today, under the Air Quality Act, the Board is to give</p> <p>5 weight to the following: the character and degree of</p> <p>6 injury to or interference with health, welfare,</p> <p>7 visibility, and property of the addressed -- addressed</p> <p>8 by this proposal; the public interest, including the</p> <p>9 social and economic value of the sources and subject of</p> <p>10 air contaminants, again addressed by the proposal; and</p> <p>11 the technical practicability and economic reasonableness</p> <p>12 of reducing or eliminating air contaminants from the</p> <p>13 sources involved; and previous experience with equipment</p> <p>14 and methods available to control the air contaminants</p> <p>15 involved.</p> <p>16 The Department today, through the testimony of</p> <p>17 Mr. Michael Baca, as well as the exhibits, which we will</p> <p>18 enter into the record shortly, will demonstrate how</p> <p>19 these factors are met.</p> <p>20 Briefly, the Department believes, based in</p> <p>21 part on the analysis of similar rules in other states</p> <p>22 and jurisdictions, the proposed fugitive dust rule is a</p> <p>23 strong method for the control of anthropogenic sources</p> <p>24 of fugitive dust in areas that experience high wind dust</p> <p>25 events that are public health, property, and visibility</p>

<p style="text-align: right;">9</p> <p>1 threats.</p> <p>2 Additionally, the new rule will ensure that</p> <p>3 the state can comply with the EPA's revised Exceptional</p> <p>4 Events Rule, as discussed more in depth in Mr. Baca's</p> <p>5 testimony.</p> <p>6 For the reasons set forth in Mr. Baca's</p> <p>7 testimony, the Department will demonstrate how the</p> <p>8 proposed rules meets the statutory burden addressed in</p> <p>9 the Air Quality Act, and thus the Department will</p> <p>10 propose adoption of the rule.</p> <p>11 At this time I would request that the Board</p> <p>12 admit into the record NMED's exhibits submitted with its</p> <p>13 notice of intent, with the exception of four amended</p> <p>14 exhibits that we also would like to offer into the</p> <p>15 record at this time.</p> <p>16 MR. HOLT: And those four exhibits are --</p> <p>17 MS. BANNERMAN: Those four amended -- it is</p> <p>18 amended Exhibit 4, which is the proposed regulation</p> <p>19 itself. The amended exhibit includes some minor</p> <p>20 technical edits based on the State Records Office's</p> <p>21 regulations, as well as an amendment requested by</p> <p>22 Tri-State Generation during the comment period. And</p> <p>23 that will be addressed more fully by Mr. Baca in his</p> <p>24 testimony.</p> <p>25 Amended Exhibit Number 15 is the public</p>	<p style="text-align: right;">11</p> <p>1 Hearing none, they are so admitted.</p> <p>2 (NMED Exhibits 1 through 17 admitted.)</p> <p>3 MS. BANNERMAN: Mr. Hearing Officer, at this</p> <p>4 time I would like to proceed with the testimony of</p> <p>5 Mr. Baca.</p> <p>6 MR. HOLT: Please.</p> <p>7 MICHAEL BACA</p> <p>8 after having been first duly sworn or affirmed,</p> <p>9 was examined and testified as follows:</p> <p>10 DIRECT EXAMINATION</p> <p>11 BY MS. BANNERMAN:</p> <p>12 Q. Please state your name for the record?</p> <p>13 A. Michael Baca.</p> <p>14 Q. What is your current employment position?</p> <p>15 A. I'm an environmental analyst for the Air</p> <p>16 Quality Bureau here in Las Cruces.</p> <p>17 Q. How long have you worked for the Bureau?</p> <p>18 A. I have worked for the Bureau for more than ten</p> <p>19 years.</p> <p>20 Q. What are your job duties?</p> <p>21 A. I serve as the subject matter expert regarding</p> <p>22 high wind exceptional events, especially as they pertain</p> <p>23 to Doña Ana and Luna County. This includes identifying</p> <p>24 expected data and requesting to exclude this data by</p> <p>25 preparing technical support documents to submit to the</p>
<p style="text-align: right;">10</p> <p>1 notices. The Department inadvertently left out the New</p> <p>2 Mexico Register affidavit of publication in its NOI</p> <p>3 exhibit, so that is included in this amended exhibit.</p> <p>4 Amended Exhibit Number 16 is the Small</p> <p>5 Business Regulatory Advisory Commission letter sent.</p> <p>6 The Department inadvertently submitted a one-sided copy</p> <p>7 of a two-page letter in the NOI exhibits.</p> <p>8 And then, also, amended Exhibit 17 is the</p> <p>9 Proposed Order and Statement of Reasons. I found a typo</p> <p>10 in that, and I didn't want the Board signing a Proposed</p> <p>11 Order and Statement of Reasons with a typo.</p> <p>12 So those are the amended exhibits, and you</p> <p>13 should both have a copy of them up there.</p> <p>14 MR. HOLT: Amended Exhibit 16 includes the</p> <p>15 letter -- the petition for 18-05 (R), the Statement of</p> <p>16 Reasons, and the red-line --</p> <p>17 MS. BANNERMAN: It includes --</p> <p>18 MR. HOLT: -- and the ordinance?</p> <p>19 MS. BANNERMAN: Yeah.</p> <p>20 MR. HOLT: The regulations --</p> <p>21 MS. BANNERMAN: Yeah, the amended exhibit is</p> <p>22 fully what was sent to the Small Business Regulatory</p> <p>23 Advisory Commission and not just this letter.</p> <p>24 MR. HOLT: Any objection to admitting these</p> <p>25 items?</p>	<p style="text-align: right;">12</p> <p>1 EPA in accordance with federal regulations.</p> <p>2 I also serve as the Bureau's border liaison by</p> <p>3 participating in air quality and border environmental</p> <p>4 groups in Southern New Mexico.</p> <p>5 Lastly, I develop air quality plans and rules</p> <p>6 to meet the goals of the Bureau and the Department and</p> <p>7 present these to the Environmental Improvement Board for</p> <p>8 adoption.</p> <p>9 Q. Please describe your educational and</p> <p>10 professional qualifications.</p> <p>11 A. I have a bachelor's degree in chemistry from</p> <p>12 Carleton College in Northfield, Minnesota; and I have</p> <p>13 worked for the New Mexico Environmental Department for</p> <p>14 nearly 14 years.</p> <p>15 Q. A copy of your resumé has been provided as</p> <p>16 NMED Exhibit 1?</p> <p>17 A. Yes, it is.</p> <p>18 Q. Did you submit technical testimony in this</p> <p>19 matter?</p> <p>20 A. Yes, I did.</p> <p>21 My direct testimony was filed as NMED</p> <p>22 Exhibit 3.</p> <p>23 Q. Do you have any changes or corrections to that</p> <p>24 testimony?</p> <p>25 A. No, I do not.</p>

<p style="text-align: right;">13</p> <p>1 Q. Do you adopt that prefiled written testimony</p> <p>2 here today?</p> <p>3 A. Yes.</p> <p>4 Q. So let's go through a bit of background on</p> <p>5 this whole effort on the part of the Department with</p> <p>6 respect to adoption of the fugitive dust rule.</p> <p>7 When did the Air Quality Bureau start the</p> <p>8 process of developing the new rule?</p> <p>9 A. Planning for the process to adopt this rule</p> <p>10 began in December of 2017.</p> <p>11 Q. Can you describe the public outreach the</p> <p>12 Bureau engaged in?</p> <p>13 A. Sure.</p> <p>14 The Bureau held initial public stakeholder</p> <p>15 meetings in January of this year to solicit input from</p> <p>16 the public regarding the impact of blowing dust and the</p> <p>17 development of a fugitive dust rule.</p> <p>18 Specifically, we requested input from the</p> <p>19 public regarding the size and type of sources that</p> <p>20 should be subject to regulation. The meetings were held</p> <p>21 in Deming, Las Cruces, and Santa Fe.</p> <p>22 The Santa Fe meeting was held during normal</p> <p>23 business hours because industry and consultants showed a</p> <p>24 large amount of interest in this area.</p> <p>25 The Deming and Las Cruces meetings were held</p>	<p style="text-align: right;">15</p> <p>1 sent notice via e-mail.</p> <p>2 Copies of the public notice of the proposed</p> <p>3 rule were made available in all the Department's field</p> <p>4 offices and on the Bureau's web page.</p> <p>5 Amended Exhibit 15 contains copies of all</p> <p>6 public notices regarding this proceeding.</p> <p>7 Q. Are there any public comments and Bureau</p> <p>8 responses you would like to address specifically here</p> <p>9 today?</p> <p>10 A. Yes.</p> <p>11 Tri-State Generation and Transmission</p> <p>12 Association submitted public comment to the Bureau prior</p> <p>13 to the deadline of filing our NOI.</p> <p>14 Tri-State requested that the Bureau clarify</p> <p>15 the definition of roadway or road to explicitly exempt</p> <p>16 surfaces that are used to access transmission lines for</p> <p>17 maintenance activities.</p> <p>18 Requiring control measures on roadways would</p> <p>19 significantly increase local government's economic</p> <p>20 burden to comply with the rules, making such measures</p> <p>21 cost prohibitive on a long-term basis.</p> <p>22 The Bureau intended to exclude emissions from</p> <p>23 traveling on roadways and agrees with Tri-State's</p> <p>24 proposed change showed in amended Exhibit 4.</p> <p>25 The alternative to not accepting their</p>
<p style="text-align: right;">14</p> <p>1 in the early evening to allow working residents an</p> <p>2 opportunity to participate.</p> <p>3 Q. Did you issue more than one draft of the</p> <p>4 proposed rule?</p> <p>5 A. Yes, we did.</p> <p>6 In April of this year, the Bureau held an</p> <p>7 informal comment period on the first draft of the rule.</p> <p>8 After considering and incorporating public input, as</p> <p>9 appropriate, the Bureau issued the proposed rule for</p> <p>10 formal comments. The text of the proposed rule is</p> <p>11 presented here as Exhibit 16.</p> <p>12 Q. Actually, I think that's incorrect -- the text</p> <p>13 of the rule is --</p> <p>14 A. Exhibit 4.</p> <p>15 Q. -- amended Exhibit 4.</p> <p>16 A. Amended Exhibit 4.</p> <p>17 Q. What public notification was given for the</p> <p>18 proposed rule?</p> <p>19 A. Public notification was published in English</p> <p>20 and Spanish in the New Mexico Register, the Albuquerque</p> <p>21 Journal, the Las Cruces Sun-News, and the Deming</p> <p>22 Headlight, on or before June 26, 2018.</p> <p>23 In addition, the Legislative Council Service,</p> <p>24 New Mexico Sunshine Portal, subscribers to the Bureau's</p> <p>25 LISTSERV, and all tribes and pueblos in the state were</p>	<p style="text-align: right;">16</p> <p>1 proposed change would subject hundreds of miles of</p> <p>2 infrequently used roadways to control measures while</p> <p>3 exempting more heavily traveled roads.</p> <p>4 Q. And was the Bureau able to come to an</p> <p>5 agreement and compromise with groups submitting</p> <p>6 comments?</p> <p>7 A. For the most part, yes, we were.</p> <p>8 Q. Do you have a brief summary of your testimony</p> <p>9 you would like to give today?</p> <p>10 A. Yes.</p> <p>11 I would like to address the background leading</p> <p>12 to the development of the proposed rule and a little bit</p> <p>13 about the rule itself.</p> <p>14 Windblown dust causes unhealthy levels of</p> <p>15 airborne particulate matter in New Mexico exceeding</p> <p>16 federal standards, as shown in Exhibit 5.</p> <p>17 In addition to adverse health effects,</p> <p>18 windblown dust reduces visibility on public roadways,</p> <p>19 creating hazardous safety conditions for travelers and</p> <p>20 can cause property damage in addition to a variety of</p> <p>21 other quality-of-life effects.</p> <p>22 Recognizing that exceedances due to natural</p> <p>23 events, such as high wind dust storms, are inherent to</p> <p>24 the Western United States. The U.S. Environmental</p> <p>25 Protection Agency provides air quality management</p>

<p style="text-align: right;">17</p> <p>1 agencies with regulatory relief for additional pollution</p> <p>2 control strategies implemented through the burdensome</p> <p>3 and lengthy nonattainment process.</p> <p>4 The Exceptional Events Rule implements the</p> <p>5 requirements that states must follow to request</p> <p>6 exclusion of data affected by natural events from the</p> <p>7 data set. It is used to determine compliance with</p> <p>8 national standards.</p> <p>9 The Bureau has used this rule in lieu of a</p> <p>10 nonattainment determination for windblown dust</p> <p>11 exceedances in Doña Ana and Luna Counties since the EPA</p> <p>12 first implemented the rule in 2008.</p> <p>13 In response to implementation concerns, EPA</p> <p>14 revised its Exceptional Events Rule on September 16,</p> <p>15 2016. The revised ruling includes mitigation-related</p> <p>16 requirements, including the development of a dust</p> <p>17 mitigation plan in areas with historically documented or</p> <p>18 known seasonal exceptional events of the same type,</p> <p>19 including recurring annually or seasonally.</p> <p>20 Luna and Doña Ana Counties were included in</p> <p>21 the rule's initial list of areas requiring to have</p> <p>22 mitigation plans in order to continue requesting</p> <p>23 exclusion of data beyond September 30th, 2018.</p> <p>24 One of the required elements of mitigation</p> <p>25 plans requires the Bureau to take steps to identify,</p>	<p style="text-align: right;">19</p> <p>1 Q. Thank you for that background?</p> <p>2 I would like to now turn to the specifics of</p> <p>3 the proposed rule.</p> <p>4 Can you describe the activities to which the</p> <p>5 proposed rule is applicable?</p> <p>6 A. Yes. The proposed rule applies to</p> <p>7 dust-generating activities resulting in disturbed</p> <p>8 surface areas that were one acre or greater in size or</p> <p>9 to commercial or industrial bulk material processing,</p> <p>10 handling, or storage operations.</p> <p>11 Q. Can you describe whether the proposed rule is</p> <p>12 applicable statewide or only in limited areas?</p> <p>13 A. The proposed rules will apply only to areas</p> <p>14 required to have mitigation plans in accordance with 40</p> <p>15 CFR 51.930. Doña Ana and Luna Counties currently meet</p> <p>16 that requirement.</p> <p>17 Q. How will entities know if they are in an area</p> <p>18 requiring a mitigation plan in accordance with 40 CFR</p> <p>19 51.930?</p> <p>20 A. EPA defines historically documented or</p> <p>21 seasonally known events as those as the same type and</p> <p>22 pollutant that occur every year either seasonally or</p> <p>23 throughout the year.</p> <p>24 EPA will use this benchmark for three events</p> <p>25 in three years to trigger mitigation requirements and</p>
<p style="text-align: right;">18</p> <p>1 study, and implement mitigating measures to abate or</p> <p>2 minimize contributing control sources of particulate</p> <p>3 matter within the Department's jurisdiction.</p> <p>4 To satisfy the mitigation requirements, the</p> <p>5 Bureau required a fugitive dust rule and the high wind</p> <p>6 fugitive dust mitigation plan for Doña Ana and Luna</p> <p>7 Counties included in amended Exhibit 4 and Exhibit 8,</p> <p>8 respectively.</p> <p>9 Development of the proposed fugitive dust rule</p> <p>10 began with the Bureau gathering stakeholder input and</p> <p>11 reviewing existing rules in the Western states, as</p> <p>12 listed in Exhibit 9.</p> <p>13 Best available control measures were selected</p> <p>14 based on other jurisdiction's implementation of control</p> <p>15 measures in relation to their nonattainment or</p> <p>16 attainment designation according to the federal</p> <p>17 particulate matter standards.</p> <p>18 The Bureau focused on the most cost-effective</p> <p>19 and widely available control measures for the sources</p> <p>20 with the highest potential for windblown dust emissions</p> <p>21 as identified in the micro-inventory of fugitive dust</p> <p>22 sources included as Exhibit 10.</p> <p>23 Internal knowledge of the type and number of</p> <p>24 fugitive dust complaints received by the Bureau also</p> <p>25 helped to focus the scope and applicability of the rule.</p>	<p style="text-align: right;">20</p> <p>1 will inform the state in writing that a mitigation plan</p> <p>2 will be required to continue using the Exceptional</p> <p>3 Events Rule.</p> <p>4 Events are identified when states formally</p> <p>5 request exclusion of data and submit demonstrations to</p> <p>6 EPA for concurrence. Thus, if other areas of the state</p> <p>7 qualify for a mitigation plan, the Bureau will know well</p> <p>8 in advance from working with EPA.</p> <p>9 The Bureau will follow the same public process</p> <p>10 and notification requirements used to develop the dust</p> <p>11 mitigation for Doña Ana and Luna County, if required to</p> <p>12 develop future mitigation plans for other parts of the</p> <p>13 state.</p> <p>14 Mitigation plans are required to include</p> <p>15 public education and outreach programs tailored to each</p> <p>16 area's circumstances. The Bureau's windblown dust</p> <p>17 website will be kept up to date with compliance</p> <p>18 information regarding dust control requirements</p> <p>19 throughout the state.</p> <p>20 Q. Are any activities or entities exempt from the</p> <p>21 proposed rule?</p> <p>22 A. Yes. Agricultural facilities, roadways, as</p> <p>23 defined in the proposed rule, military activities, and</p> <p>24 operations having an air quality and/or mining permit</p> <p>25 are exempt.</p>

<p style="text-align: right;">21</p> <p>1 The roadways that are exempt from the rule are</p> <p>2 any public or private paved or unpaved surface that be</p> <p>3 entered or used with the primary purpose of public or</p> <p>4 private travel.</p> <p>5 However, certain roadways remain under the</p> <p>6 authority of the rule; specifically, roadways under</p> <p>7 construction or easements or right-of-ways or access</p> <p>8 roads used in association with construction activity,</p> <p>9 bulk material handling and transport, disturbed surface</p> <p>10 areas, or inactive disturbed surface areas.</p> <p>11 The purpose of the roadway exemption was to</p> <p>12 capture roadways used for construction, or other</p> <p>13 commercial activities, while exempting private and</p> <p>14 public dirt roads, including the infrequently traveled</p> <p>15 roads used for accessing and maintaining transmission</p> <p>16 lines.</p> <p>17 Agricultural facilities are exempted to ensure</p> <p>18 the proposed rule did not impact farming or other</p> <p>19 agricultural activities. One reason for this is the</p> <p>20 seasonal nature of most agricultural activities in</p> <p>21 Doña Ana and Luna Counties resulting in short-lived dust</p> <p>22 emissions.</p> <p>23 Most agricultural emissions, including those</p> <p>24 resulting from the use of roads, occur during the</p> <p>25 planning or harvesting periods. Preparation of soil</p>	<p style="text-align: right;">23</p> <p>1 accomplished by using two stopwatches and visible</p> <p>2 observations.</p> <p>3 Alternative compliance tests may be approved</p> <p>4 by the Bureau on a case-by-case basis.</p> <p>5 Q. Can you describe how limiting these types of</p> <p>6 emissions in the areas in which the proposed rule is</p> <p>7 applicable can protect the public health and welfare of</p> <p>8 the citizens of New Mexico and is otherwise in the</p> <p>9 public interest of the state?</p> <p>10 A. Minimizing controllable emissions of</p> <p>11 particulate matter will reduce the amount of blowing</p> <p>12 dust in the atmosphere, minimizing the health impact of</p> <p>13 dust storms.</p> <p>14 This will improve air quality on all days,</p> <p>15 whether an exceedance is recorded or not.</p> <p>16 Dust control for these emissions will also</p> <p>17 reduce the incidents of welfare impacts experienced as</p> <p>18 property damage and help prevent dangerous driving</p> <p>19 conditions during high wind events.</p> <p>20 Q. Can you describe the control measures required</p> <p>21 by the proposed rules?</p> <p>22 A. Control measures are required to ensure</p> <p>23 emission limitations in the proposed rule are met. They</p> <p>24 should be selected based on the size, scope, and type of</p> <p>25 activities that generate fugitive dust.</p>
<p style="text-align: right;">22</p> <p>1 before planting new crops results in large clots of dirt</p> <p>2 that are resistant to wind erosion.</p> <p>3 In addition, farmers routinely and voluntarily</p> <p>4 use best management practices, such as preparing roads</p> <p>5 perpendicular to prevailing wind direction, in an effort</p> <p>6 to preserve the nutrient-rich topsoil, which results in</p> <p>7 healthier and more abundant crops.</p> <p>8 Other operations who already have an air</p> <p>9 quality and/or mining permit were exempted because those</p> <p>10 permits already control fugitive dust and other</p> <p>11 emissions, as application of the proposed rule to those</p> <p>12 activities would have been redundant and duplicative.</p> <p>13 Q. What are the limitations in the proposed</p> <p>14 rule, the emission limitations?</p> <p>15 A. So the emissions limitations -- visible dust</p> <p>16 emissions cannot cross any property line containing a</p> <p>17 regulated fugitive dust source for more than five</p> <p>18 minutes in any consecutive 60-minute period.</p> <p>19 Q. And what is the test for determination of</p> <p>20 whether the emission limitation for this rule has been</p> <p>21 violated?</p> <p>22 A. Compliance will be determined by a Method 22</p> <p>23 Visible Emissions Test that will be described in 40 CFR,</p> <p>24 Part 60, Appendix A. This compliance test does not</p> <p>25 require specialized training or certification and can be</p>	<p style="text-align: right;">24</p> <p>1 The proposed rule lists suggested control</p> <p>2 measures that may be used individually or collectively</p> <p>3 to control dust for disturbed surface areas, inactive</p> <p>4 disturbed surface areas, bulk material handling, and</p> <p>5 storage operations.</p> <p>6 Common control measures include phasing of</p> <p>7 operations, using wind breaks or fences, applying water</p> <p>8 or surface treatment for stabilization or limiting the</p> <p>9 amount of disturbed surface area.</p> <p>10 Q. Is the use of such control measures</p> <p>11 economically reasonable and technically practical?</p> <p>12 A. Yes. These control measures are widely</p> <p>13 available and implemented throughout many southwestern</p> <p>14 states.</p> <p>15 The Bureau's website has a list of dust</p> <p>16 control techniques, products, and services available in</p> <p>17 our state.</p> <p>18 Q. Please describe the dust control plans</p> <p>19 required by the proposed rule.</p> <p>20 A. Dust control plans must document sources of</p> <p>21 dust generated at each site, including the control</p> <p>22 measures to be implemented to achieve compliance with</p> <p>23 the emission limitations in the proposed rule.</p> <p>24 Q. When is a dust control plan required under the</p> <p>25 proposed rule?</p>

25

1 A. All owners and operators of sources of
2 fugitive dust subject to regulation under the proposed
3 rule will be required to develop and maintain dust
4 control plans.

5 Q. And will there be times when the dust control
6 plans must be updated or revised?

7 A. Yes.

8 If the Bureau determines that control measures
9 are inadequate to comply with emission limitations, they
10 may require revisions of dust control plans to address
11 these concerns.

12 Q. How long must records of these dust control
13 plans and other records required by the proposed rule be
14 kept?

15 A. Records must be kept for a minimum of two
16 years from the date that the source is subject to
17 regulation under the rule.

18 Q. And does the Department have a record-keeping
19 form as required by the proposed rule?

20 A. Yes, it is contained in Exhibit 11.

21 Q. Is creation of a dust control plan and other
22 record-keeping requirements of the proposed rule
23 technically practicable and economically reasonable?

24 A. Yes. The rules provide the required
25 information for a dust control plan and provide example

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1 control measures that may be used either individually
2 or in combination to meet the limits in the proposed
3 rule.

4 The development of the plan and record-keeping
5 of the plan do not require specialized training. It may
6 be achieved using paper, a writing utensil, and
7 knowledge of the dust-generating activities at the site.

8 The rule allows the regulated community to
9 choose which control measures to implement and allows
10 them to easily engage compliance and effectiveness.

11 MS. BANNERMAN: Thank you, Mr. Hearing
12 Officer. At this time I have no further questions.

13 I would like to note for record that amended
14 Exhibit 16 is a letter I prepared on behalf of the
15 Department to the Small Business Regulatory Advisory
16 Commission. The Commission did not respond.

17 The letter sought comment because the Bureau
18 determined that the proposed rule may have some economic
19 effect on small business if they are located in these
20 areas and the rule applies to their activities.

21 But having received no comment from the
22 Commission, the Bureau is confident the effects are
23 minimal enough to move forward with the proposed rule.

24 Also, amended Exhibit 17 is the Department's
25 Proposed Order and Statement of Reasons, which I will

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1 also send to your counsel.

2 With that, we are open to questions.

3 MR. HOLT: Thank you.

4 CROSS EXAMINATION BY MR. HOLT

5 MR. HOLT: What areas do require a mitigation
6 plan under 40 CFR 51.930?

7 MR. BACA: Chairman Holt, at this time it is
8 Doña Ana County and Luna County.

9 MR. HOLT: In their entirety or just
10 portions of them?

11 MR. BACA: In the rule, Exceptional Events
12 Rule, they do list the Anthony nonattainment area as
13 being the area requiring a dust mitigation plan, but in
14 our conversations with EPA, they feel -- and in the
15 Federal Register, they reserve the right to expand those
16 areas and agreed that, since we monitor exceedance
17 outside of that area, that the entirety of Doña Ana
18 County would be included in the plan.

19 MR. HOLT: So the dust control plan would be
20 required for a great number of people in both Luna and
21 Doña Ana County?

22 MR. BACA: I believe so.

23 MR. HOLT: How long before affected businesses
24 or individuals will be required to submit these dust
25 control plans?

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1 MR. BACA: The dust control plan will not be
2 required to be submitted to the Department.

3 MR. HOLT: I'm sorry. I didn't hear you.

4 MR. BACA: The dust control plans will not be
5 required to be submitted to the Department. They will
6 only have to be developed and maintained on-site with
7 control measures implemented that are stated on the dust
8 control plan.

9 MR. HOLT: What enforcement mechanisms are
10 there?

11 MR. BACA: So the Department, to stay within
12 our resources, we decided that this rule would be
13 enforced on a complaint basis, so we would not be
14 actively searching out for noncompliant sources. We
15 will be responding to the public's complaints.

16 MR. HOLT: So you had public hearing in
17 Deming, Las Cruces, and Santa Fe.

18 Were there concerns voiced at these public
19 meetings?

20 MR. BACA: Chairman Holt, I do not recall any
21 negative comments from the public at these meetings for
22 the fugitive dust control rule.

23 Most of the comments that we received that
24 were negative were from agricultural interests, which we
25 are not including into any -- in the coverage of the

29

1 rule.

2 MR. HOLT: They are exempt?

3 MR. BACA: They are exempted from the rule.

4 MR. HOLT: Those are my only questions.

5 Does anyone here have questions of the

6 Environment Department?

7 Hearing none.

8 Ms. Bannerman?

9 MS. BANNERMAN: At this time the Department
10 respectively requests that the Board adopt the
11 Department's petition to adopt this new rule for the
12 purpose of the control of fugitive dust sources into
13 Title 20, Chapter 2, of New Mexico Administrative Code.

14 MR. HOLT: Thank you.

15 I notice that no one here submitted a notice
16 of intent to submit technical testimony.

17 Is there anyone here that would like to offer
18 any testimony, any comment, voice any concerns?

19 Ms. Bannerman, anything further from the
20 Department?

21 MS. BANNERMAN: I don't believe so, no.

22 MR. HOLT: Is there any reason to leave the
23 record in this matter open?

24 Then the record in this matter is closed.

25 (Hearing was concluded at 10:24 a.m.)

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1 REPORTER'S CERTIFICATE

2 I, HAYLEY P. MACDONALD, CSR, RPR, NM CCR #140, DO
3 HEREBY CERTIFY that on September 28, 2018, the
4 proceedings in the above-captioned matter were taken
5 before me, that I did report in stenographic shorthand
6 the proceedings set forth herein, and the foregoing
7 pages are a true and correct transcription to the best
8 of my ability.

9 I FURTHER CERTIFY that I am neither employed by
10 nor related to nor contracted with (unless excepted by
11 the rules) any of the parties or attorneys in this case,
12 and that I have no interest whatsoever in the final
13 disposition of this case in any court.

14

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HAYLEY MACDONALD, RPR
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